

OPENING STATEMENTS

DUI: BAC & Beyond
By Tobin Sidles

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The most interesting part of
a trial

Opening Statements

- Why are you here today?

Opening Statements

- You want to get better! And...

1) YOU LIKE TO WIN! Good Openings win the close cases.

2) YOU HAVE TOTAL CONTROL. (Really, how many objections do you really get during these as opposed to elsewhere?)

Opening Statements

- There have been many studies. All experts agree that over 75% of your jurors will make up their minds as to guilty or not guilty by the end of the opening statements.

Opening Statements

TRADITIONAL THEORY – Opening statements are restricted to what the parties expect to prove during trial through witnesses and exhibits. This is not a time for argument. As always, it is improper to mention inadmissible or unprovable evidence, argue, vouch, state personal opinion, discuss the law or appeal to sympathy or prejudice.

Opening Statements

- Modern View – You present your theory of the case. There is a Judge's Instruction - "What the attorneys say is not evidence..."
- This isn't a license to go beyond acceptable boundaries, but it is a broader view.

Opening Statements

- Guess what? All the studies show that most jurors can't remember who told them what. So, your opening statements really are evidence to them.

Opening Statements

- The Psychology of the Opening Statement



Opening Statements

- Tweet after Prosecutors Opening – At trial. Guilty. I can tell."



Opening Statements

- Why does this happen?

In Psychology, it is called the "Rule of Primacy". If you believe something the first time you hear it, usually because of your past events, you will process information that supports your view, and will discard items that contradict that view.

Opening Statements

- EXAMPLE

- In a Disney princess movie, the stepmother will be...?

Opening Statements

EVIL



Opening Statements

- So, when you tell a jury that the defendant was out drinking and driving they immediately think they were _____?

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- As a group, we are far behind in learning how to sell our position. Think songs, the nightly news and even advertisements.

Opening Statements

Opening Statements

- Be aware there is a time limit after you start talking!



Opening Statements

BASIC TIME ISSUES

At no time will a jurors attention to your opening statement last longer than fifteen (15) minutes, unless you add a surprise or "mix it up".

If you talk under a minute, it is perceived you may not be knowledgeable or sincere.

Opening Statements

- Trial tip-Jurors remember the first things you say, and the last things you say the best, especially if you tell them you are about to finish up. So don't tell them the law. Start with your strongest evidence, tell them you are about to finish and end strong!

Opening Statements

- FIRST RULE- Establish your theme. Use an attention getting theme (hook). Be creative and confident.
- SECOND RULE - Back up your theme with your strongest facts. (Try for three - hold the fourth for closing).
- THIRD - during trial give the jury something to convince them! (Enthusiasm, confidence and integrity)

Opening Statements

- 1) FIRST RULE -Have an attention-grabbing intro statement!! Set your theme. Use your "hook" or use a quote or cliché (assuming it isn't overly argumentative).



Opening Statements

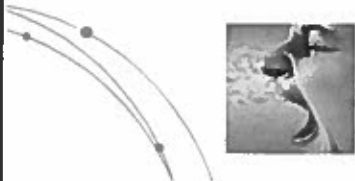
- Trial tip – Your themes should often be associated with clichés, sayings and rhymes. (The brain loves rhymes.)

Mary had a little lamb whose fleece was white as snow, and ...

• Jack and Jill went up a hill....

Opening Statements

- The most common problems with experienced prosecutors? We rely on a standardized presentations, our theme is mostly a recitation of the law and our facts.



Opening Statements

- Take a look at the video on the next slide. Ask yourself what was wrong versus right in this opening?

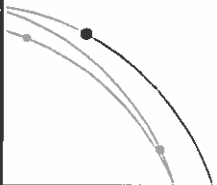


Opening Statements



Opening Statements

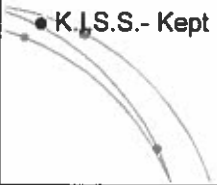
REALLY?



Opening Statements

GOOD THINGS?

- Close enough for Jury impact
- Not using any notes
- Summarizes the case
- K.I.S.S.- Kept it short and simple



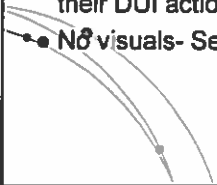
Opening Statements

- What was bad about this Opening?



Opening Statements

- In Opening, it's all about what the defendant did. Put the defendant on the defensive. Make the defendant explain their DUI actions, not the cops actions.
- No visuals- Seeing is believing



Opening Statements

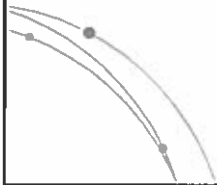
TRY:

- "Pizzazz" or "Hook" statements - "On a DUI, a point ____ is just too high." or
- "Roses are red, violets are blue ...
- But be careful. Don't say "There was a new high score on the intoxlyzer..."



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- What statement will the jury remember tomorrow during deliberations??



Opening Statements

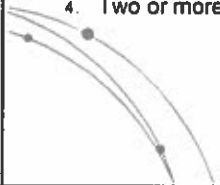
- SECOND RULE

Provide a short, chronological list of strong facts which support your theme!



Opening Statements

- You often hear:
 1. Bad driving
 2. Some Statement- "I can't do this, I'm drunk"
 3. A BAC above .08
 4. Two or more poor SFST's.



Opening Statement

- Tip - Pick your four best facts. Rate them. State numbers one 1,3 and 4 in the opening statement and develop the second best during the course of the trial.
- Numbers 1,3 and 4 are your contract with the jury! You make a contract with the jury during the opening. You **MUST** fulfill that contract.

Opening Statement

- Suppose my second best is the statement "I can't do this when I'm not drinking"
- Develop this second statement during trial.
 - So he knows there is a difference from not drinking? He knows consuming alcohol makes this type of test harder? And this type of test measures the divided attention you have to have to drive?

Opening Statements

- THIRD RULE
- Show Passion, Integrity, and Honesty.

Opening Statements

- Why hold the one good fact back at opening? To "seal the deal"!
- You gave them your promised statements plus something else that also proved your position, ergo –you are sincere and trustworthy. Pound in that "extra fact" at closing!

Opening Statements

- Passion – If you don't believe it, why should the Judge/Jury?
- Don't ruin your jury rapport by over-using technology! (Like me during this presentation!). It takes away from establishing a personal rapport. Look them in the eye and speak clearly and forcefully.

Opening Statements

- Honesty
 - As stated, you must provide the evidence you promised! Failure to deliver kills your credibility.
- Remember, even if the defense counsel comes up with another slant- YOU GOT THERE FIRST ! (RULE OF PRIMACY).

Opening Statements

• OTHER OPENING STATEMENT TIPS

- 1) Pull the sting? Usually NO on an easy short case. Why dilute your argument? Remember "Primacy". They will just discard it. If a longer case-yes.
- 2) Never use the term "I believe..!" It is vouching.
(See *Hodgins v. State*, 962 P.2d 153 (1998))
- 3) You really don't have to include the elements! It's the Judges job. Too many use it as a crutch and it ruins your jury rapport.

Opening Statements

- 4) Tell a story from what the witnesses saw, and don't use cop lingo.
- 5) Never use "legalese" or complex words.
- 6) Always make eye contact with the jury (Just don't "mad dog").
- 7) While talking- don't turn your back on the jury. And **NEVER** talk to your slides/presentation!

Opening Statements

- 8) Always end with a strong request for a finding of guilt.

"The evidence presented to you will prove beyond a reasonable doubt that the defendant is guilty."

Remember (repeat your opening hook statement). In closing, if they attacked the officer state (You can tell officer ____ don't despair, it is obvious_ was impaired!) Rhymes work!

Opening Statements

- In Summary-
 - Establish a theme-Start with a good strong statement/"hook". Tell and end strong!
 - Give three good facts about the case, hold one good thing back for trial and closing.
 - Do NOT overpromise, overuse technology (but don't abandon it either!), or vouch. Stick to what the defendant did. Make them defend, not the officers.

Opening Statements

- QUESTIONS?

THE END

Thanks to:

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(Arkansas trial overturned, 2011; LA Times-social media and the law 2010)
